



## Section 404 of the Clean Water Act

# Laws, Regulations, Executive Orders

## Laws

### Clean Water Act (CWA)

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. "Clean Water Act" became the Act's common name with amendments in 1972.

**Section 404** - establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands.

Overview of Section 404 (PDF)  
*Text of Section 404 (33 U.S.C. 1344)*

**Section 403** - Ocean Discharge Criteria

*Text of Section 403 (33 U.S.C. 1343)*

**Section 402** - National Pollutant Discharge Elimination System

*Text of Section 402 (33 U.S.C. 1342)*

**Section 401** - State Certification of Water Quality

Overview of Section 401 Certification and Wetlands  
*Text of Section 401 (33 U.S.C. 1341)*

**Section 309** - Federal Enforcement Authority

*Text of Section 309 (33 U.S.C. 1318)*

**Section 308** - Inspections, Monitoring, Entry

*Text of Section 308 (33 U.S.C. 1318)*

**Section 502** - General Definitions

*Text of Section 502 (33 U.S.C. 1362)*

## National Environmental Policy Act of 1969 (NEPA)

NEPA is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy.

*Text of NEPA (42 U.S.C. 4321-4347)* [Exit](#)

## Rivers & Harbors Appropriation Act of 1899

**Rivers & Harbors Act of 1899** - establishes a program to regulate activities affecting navigation in United States waters, including wetlands

*Text of Section 9 (33 U.S.C. 401)*

*Text of Section 10 (33 U.S.C. 403)*

## Federal Agriculture Improvement and Reform Act of 1996

Commonly known as the Farm Bill, the 1996 revisions included modifications to four programs related to the conservation of wetlands on agricultural land.

*Conservation Provisions in the 1996 Farm Bill* [Exit](#)

## Endangered Species Act (ESA)

The Endangered Species Act provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found.

*ESA (7 U.S.C. 136)*

## Transportation Equity Act for the 21st Century (TEA-21)

Authorizes funding to improve the Nation's transportation infrastructure, enhance economic growth and protect the environment, including opportunities to improve water quality and restore wetlands.

*Overview of TEA-21*

*Text of TEA-21* [Exit](#)

## Coastal Wetlands Planning, Protection & Restoration Act (CWPPRA) [Exit](#)

## North American Wetlands Conservation Act (NAWCA) [Exit](#)

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## Regulations

**Section 404(b)(1) Guidelines** - regulations, established by the EPA, that constitute the substantive environmental criteria used in evaluating activities regulated under Section 404 of the Clean Water Act.

*404(b)(1) Guidelines (40 CFR 230)*

**Compensatory Mitigation Rule** - On March 31, 2008, EPA and the U.S. Army Corps of Engineers (the Corps) issued revised regulations governing compensatory mitigation for authorized impacts to wetlands, streams, and other waters of the U.S. under Section 404 of the Clean Water Act. These regulations are designed to improve the effectiveness of compensatory mitigation to replace lost aquatic resource functions and area, expand public participation in compensatory mitigation decision making, and increase the efficiency and predictability of the mitigation project review process.

Federal Register Notice of Final Rule

**Fill Material** - On May 9, 2002, the Federal Register published a final Corps and EPA rule reconciling their previously differing Clean Water Act section 404 regulations defining the term "fill material" and amended their definition of "discharge of fill material."

Final Revisions to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material"

**Permit Regulations** - regulations, established by the Army Corps of Engineers, that specifies the procedures and criteria for the issuance of Section 404 permits.

*Corps Permit Regulations (33 CFR 320-332)* [Exit](#)

**Program Definitions and Permit Exemptions** - established by the EPA, these definitions apply to the Section 404 program and clarify which activities are exempted from regulation under Section 404(f) of the Clean Water Act.

*Text of Program Definitions and Permit Exemptions (40 CFR 232)*

**Section 404(c) Regulations** - regulations to clarify EPA's authority to restrict or prohibit the use of an area for discharge of dredged or fill material if the discharge will have unacceptable adverse impacts.

*Section 404(c) Regulations (40 CFR 231)*

Chronology of 404(c) Actions

**Nationwide Permit Program** - program established by the Army Corps of Engineers that allows the Corps to grant general permits for similar categories of discharges that will have only minimal adverse effects.

Information on the current Nationwide Permits [Exit](#)

The Army Corps of Engineers reissuance of existing Nationwide Permits, General Conditions, and definitions with modifications on March 19, 2012.

**Enforcement Regulations** - regulations, established by the EPA, to outline options available to the agencies to enforce the provisions of Section 404.

*Enforcement Regulations (40 CFR, Part 22)*

**State Assumption Regulations** - regulations that specify the procedures and criteria used by EPA in assessing State assumption of section 404 programs.

*State Assumption Regulations (40 CFR 233)*

**Tribal Assumption Regulations** - regulations that specify the procedures and criteria used by EPA in assessing Tribal assumption of section 404 programs.

*Tribal Assumption Regulations (40 CFR, Part 233, Subpart G)*

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## Executive Orders

**Executive Order 11988: Floodplain Management** - an order given by President Carter in 1977 to avoid the adverse impacts associated with the occupancy and modification of floodplains.

**Executive Order 11990: Protection of Wetlands** - an order given by President Carter in 1977 to avoid the adverse impacts associated with the destruction or modification of wetlands.

**Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights** - an order given by President Reagan in 1988 directing the agencies to carefully evaluate the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights.

**Executive Order 12962: Recreational Fisheries** - an order given by President Clinton in 1995 to conserve, restore, and enhance aquatic systems in order to provide for increased recreational fishing opportunities nationwide.

**Executive Order 13186: Responsibilities of Federal Agencies to Protect Migratory Birds (PDF)** - an order given by President Clinton in 2001 directs executive departments and agencies to take certain actions to further implement the Migratory Bird Treaty Act.

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